

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 3116**

BY DELEGATE CAPUTO, HARTMAN, HORNBUCKLE,

HOWELL AND NELSON

[Introduced February 12, 2019; Referred  
to the Committee on Government Organization.]

1 A BILL to amend and reenact §11-16-6a and §11-16-6b of the Code of West Virginia, 1931, as  
2 amended, relating to removing current limitations on sales of nonintoxicating beer and  
3 nonintoxicating craft beer growlers by brewers, brewpubs, retailers and private clubs.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 16. NONINTOXICATING BEER.**

**§11-16-6a. Brewer and resident brewer license to manufacture, sell and provide  
complimentary samples.**

1 (a) *Legislative findings.* -- The Legislature hereby finds that it is in the public interest to  
2 regulate, control and support the brewing, manufacturing, distribution, sale, consumption,  
3 transportation and storage of nonintoxicating beer and nonintoxicating craft beer and its industry  
4 in this state in order to protect the public health, welfare and safety of the citizens of this state,  
5 and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or  
6 resident brewer with its principal place of business and manufacture located in this state to have  
7 certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer  
8 manufactured in this state for the benefit of the citizens of this state, the state's growing brewing  
9 industry and the state's hospitality and tourism industry, all of which are vital components for the  
10 state's economy.

11 (b) *Sales of nonintoxicating beer.* -- A licensed brewer or resident brewer with its principal  
12 place of business and manufacture located in the State of West Virginia may offer only  
13 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident  
14 brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for  
15 consumption off the licensed premises only in the form of kegs, bottles, cans or growlers for  
16 personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give  
17 or furnish nonintoxicating beer for consumption on the premises of the principal place of business  
18 and manufacture located in the State of West Virginia, except for the limited purpose of  
19 complimentary samples as permitted in subsection (c) of this section.

20           (c) *Complimentary samples.* -- A licensed brewer or resident brewer with its principal place  
21 of business and manufacture located in the State of West Virginia may only offer complimentary  
22 samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident  
23 brewer's principal place of business and manufacture located in the State of West Virginia. The  
24 complimentary samples may be no greater than two ounces per sample per patron, and a  
25 sampling shall not exceed ten complimentary two-ounce samples per patron per day. A licensed  
26 brewer or resident brewer providing complimentary samples shall provide complimentary food  
27 items to the patron consuming the complimentary samples; and prior to any sampling, verify,  
28 using proper identification, that the patron sampling is 21 years of age or over and that the patron  
29 is not visibly intoxicated.

30           (d) *Retail sales.* -- Every licensed brewer or resident brewer under this section shall comply  
31 with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting  
32 sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable  
33 requirements and penalties in this article.

34           (e) *Payment of taxes and fees.* -- A licensed brewer or resident brewer under this section  
35 shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any  
36 other taxes and fees required, and meet applicable licensing provisions as required by this  
37 chapter and by rule of the commissioner.

38           (f) *Advertising.* -- A licensed brewer or resident brewer under this section may advertise a  
39 particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the  
40 licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating  
41 craft beer subject to state and federal requirements or restrictions. The advertisement may not  
42 encourage intemperance.

43           (g) *Growler requirements.* -- A licensed brewer or resident brewer under this section must  
44 fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed  
45 brewer or resident brewer under this section must sanitize, fill, securely seal and label any growler

46 prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail  
47 sale ~~up to two~~ 64-ounce, or ~~four~~ 32-ounce, growlers of nonintoxicating beer or nonintoxicating  
48 craft beer manufactured by the licensed brewer or resident brewer ~~per customer per day~~ for  
49 personal consumption off of the licensed premises and not for resale. A licensed brewer or  
50 resident brewer under this section may refill a growler subject to the requirements of this section.  
51 A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it.  
52 A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked,  
53 broken, unsafe or otherwise unfit to serve as a sealed beverage container.

54 (h) *Growler labeling.* -- A licensed brewer or resident brewer under this section selling  
55 growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name  
56 of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft  
57 beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating  
58 craft beer in the growler and the date the growler was filled or refilled, and, further, all labeling on  
59 the growler shall be consistent with all federal labeling and warning requirements.

60 (i) *Growler sanitation.* -- A licensed brewer or resident brewer authorized under this section  
61 shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county  
62 health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall  
63 sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines,  
64 barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply with  
65 this subsection may result in penalties under §11-16-23 of this code.

66 (j) *Fee.* -- There is no additional fee for a licensed brewer or resident brewer authorized  
67 under this section to sell growlers.

68 (k) *Limitations on licensees.* -- To be authorized under this section, a licensed brewer or  
69 resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or  
70 resident brewer's principal place of business and manufacture located in the State of West  
71 Virginia. No more than one brewer or resident brewer license may be issued to a single person

72 or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer  
73 or resident brewer under this section may only conduct tours, give complimentary samples and  
74 sell growlers during the hours of operation set forth in §11-16-18(a)(1), of this code. A licensed  
75 brewer or resident brewer authorized under this section shall be subject to the applicable penalties  
76 under §11-16-23 of this code for violations of this section.

77 (l) *Rules.* -- The commissioner, in consultation with the Bureau for Public Health  
78 concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-  
79 1 *et seq.* of this code, to implement this section.

**§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail  
licensee and Class B retail licensee's authority to sell growlers.**

1 (a) *Legislative findings.* -- The Legislature hereby finds that it is in the public interest to  
2 regulate, control and support the brewing, manufacturing, distribution, sale, consumption,  
3 transportation and storage of nonintoxicating beer and nonintoxicating craft beer and its industry  
4 in this state in order to protect the public health, welfare and safety of the citizens of this state and  
5 promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class A  
6 retail dealer, Class B retail dealer, private club, Class A retail licensee or Class B retail licensee  
7 to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating  
8 craft beer manufactured in this state for the benefit of the citizens of this state, the state's growing  
9 brewing industry and the state's hospitality and tourism industry, all of which are vital components  
10 for the state's economy.

11 (b) *Sales of nonintoxicating beer.* -- A licensed brewpub, Class A retail dealer, Class B  
12 retail dealer, private club, Class A retail licensee or Class B retail licensee who pays the fee in  
13 subsection (i) of this section and meets the requirements of this section may offer nonintoxicating  
14 beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler  
15 for personal consumption only off of the licensed premises and not for resale. Prior to the sale,  
16 the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating

17 beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly  
18 intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors,  
19 including wine, for consumption off of its licensed premises, unless it is a private club licensed to  
20 sell sealed wine for consumption off of the licensed premises and meets the requirements set out  
21 in §60-8-3(j) and §60-8-3 (l) of this code, for the sale of wine, not liquor.

22 (c) *Retail sales.* -- Every licensee authorized under this section shall comply with all the  
23 provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of  
24 nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable  
25 requirements and penalties in this article.

26 (d) *Payment of taxes and fees.* -- A licensee authorized under this section shall pay all  
27 taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes  
28 and fees required, and meet applicable licensing provisions as required by this chapter and by  
29 rule of the commissioner.

30 (e) *Advertising.* -- A licensee authorized under this section may advertise a particular  
31 brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the  
32 nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or  
33 restrictions. The advertisement may not encourage intemperance.

34 (f) *Growler requirements.* -- A licensee authorized under this section must fill a growler  
35 and patrons are not permitted to access the secure area or fill a growler. A licensee authorized  
36 under this section must sanitize, fill, securely seal and label any growler prior to its sale. A licensee  
37 authorized under this section may only offer for retail sale ~~up to two~~ 64-ounce, or ~~four~~ 32-ounce,  
38 growlers of nonintoxicating beer or nonintoxicating craft beer ~~per customer per day~~ for personal  
39 consumption off of the licensed premises and not for resale. A licensee under this section may  
40 refill a growler subject to the requirements of this section. A licensee shall visually inspect any  
41 growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be  
42 cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

43           (g) *Growler labeling.* -- A licensee authorized under this section selling growlers shall affix  
44 a conspicuous label on all sold and securely sealed growlers listing the name of the licensee  
45 selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the  
46 growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in  
47 the growler and the date the growler was filled or refilled, and, further, all labeling on the growler  
48 shall be consistent with all federal labeling and warning requirements.

49           (h) *Growler sanitation.* -- A licensed brewer or resident brewer authorized under this  
50 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state  
51 and county health requirements prior to its sealing. In addition, the licensed brewer or resident  
52 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap  
53 lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure  
54 to comply with this subsection may result in penalties under §11-16-23 of this code.

55           (i) *Fee.* -- Commencing July 1, 2015, and by every July 1 thereafter, there is an annual  
56 \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided  
57 by this section. The licensee must be in good standing with the state at the time of paying the fee.

58           (j) *Limitations on licensees.* -- A licensee under this section may only sell growlers during  
59 the hours of operation set forth in §11-16-18(a)(1) of this code. Any licensee licensed under this  
60 section must maintain a secure area for the sale of nonintoxicating beer or nonintoxicating craft  
61 beer in a growler. The secure area must only be accessible by the licensee. Any licensee licensed  
62 under this section shall be subject to the applicable penalties under §11-16-23 of this code for  
63 violations of this section.

64           (k) *Nonapplicability of certain statutes.* -- Notwithstanding any other provision of this code  
65 to the contrary, licensees under this section are permitted to break the seal of the original  
66 container for the limited purpose of filling a growler as provided in this section. Any unauthorized  
67 sale of nonintoxicating beer or nonintoxicating craft beer or any consumption not permitted on the  
68 licensee's licensed premises is subject to penalties under this article.

69           (l) *Rules.* -- The commissioner is authorized to propose rules for legislative approval,  
70 pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

NOTE: The purpose of this bill is to remove the daily limit on nonintoxicating beer and nonintoxicating craft beer growler sales for brewers, brew pubs, retailers and private clubs.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.